

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN CIVIL LIBERTIES UNION;
et al.

Plaintiffs,

v.

ALBERTO R. GONZALES, in his official
capacity as Attorney General of the United
States,

Defendant.

Civil Action No. 98-CV-5591

RULESPACE LLC's MOTION FOR PROTECTIVE ORDER

Pursuant to Paragraph 10 of the Agreed Protective Order entered in this case, RuleSpace LLC ("RuleSpace") moves this Court for a Protective Order requiring that certain material previously designated by RuleSpace as confidential be filed under seal and not offered or discussed in open court.

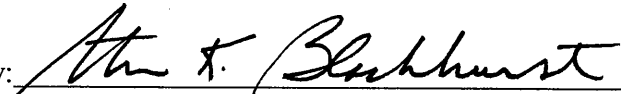
The excerpts of deposition testimony of Alistair R. Allan, President and Chief Executive Officer of RuleSpace, taken on February 28, 2006, that RuleSpace wants filed under seal are as follows:

- Page 93, lines 10-15;
- Page 105, lines 1-23;
- Page 109, lines 1-8;
- Page 119, lines 5-25 and Page 120, lines 1-5; and
- Page 161, lines 5-9.

This motion is supported by the attached Memorandum of Points and Authorities in Support of RuleSpace's Motion for Protective Order, the Declaration of Alistair R. Allan, the President and Chief Executive Officer of RuleSpace, and the Declaration of Steven K. Blackhurst.

DATED this 20th day of October, 2006.

Respectfully submitted,

By: 

Steven K. Blackhurst, OSB #73032

ATER WYNNE LLP

222 SW Columbia, Suite 1800

Portland, Oregon 97201-6618

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Attorney for Third Party

RULESPACE LLC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN CIVIL LIBERTIES UNION;
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Plaintiffs,

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Civil Action No. 98-CV-5591

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
RULESPACE LLC's MOTION FOR PROTECTIVE ORDER

RuleSpace LLC ("RuleSpace") is a small company that has developed a content classification technology that is designed to recognize various types of inappropriate content on Web pages or mobile devices such as cell phones. RuleSpace's primary customers are Internet service providers, search engines and cellular telephone companies.

RuleSpace produced documents in response to a subpoena in this case and its President and Chief Executive Officer, Alistair R. Allan was deposed on February 28, 2006. Pursuant to the Agreed Protective Order in this case, RuleSpace designated certain portions of Mr. Allan's deposition testimony (and referenced exhibits) as confidential because that testimony contained confidential business information. Recently, the Department of Justice and the ACLU notified RuleSpace that the parties intended to introduce certain portions of Mr. Allan's deposition testimony into evidence at the trial of this matter. (*See* Declaration of Steven K. Blackhurst

“Blackhurst Decl.” at ¶ 2.) This motion seeks to preserve the confidentiality of those excerpts previously designated by RuleSpace as containing confidential information.

One of 28 deposition excerpts to be offered by the Department of Justice, page 119, lines 5-25 and page 120, lines 1-5, contains confidential information. RuleSpace requests that that excerpt be filed under seal and not be discussed in open court.

Four deposition excerpts to be offered by the ACLU contain confidential information: Page 93, lines 10–15; Page 105, lines 1–23; Page 109, lines 1–8; and Page 161, lines 5–9. RuleSpace requests that each excerpt and any referenced exhibits be filed under seal and not be discussed in open court.

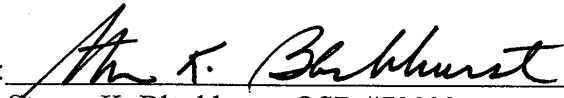
As explained in the Declaration of Alistair R. Allen, RuleSpace’s President and Chief Executive Officer, some of the deposition excerpts disclose the names of certain potential customers with whom RuleSpace is currently involved in business discussions. Disclosure of the identities of these potential clients could cause serious damage to RuleSpace’s efforts to do business with one or more of these potential customers. Other deposition excerpts disclose information that RuleSpace is contractually prohibited from disclosing pursuant to contractual arrangements entered into with Microsoft, America Online and Yahoo!. Disclosure of this information could adversely affect RuleSpace or those companies with which it has entered into agreements containing non-disclosure provisions.

RuleSpace respectfully requests that its motion for a protective order be granted so that deposition excerpts referenced above are neither offered nor discussed in open court, but are only filed under seal.

Counsel for the ACLU and counsel for the Department of Justice have indicated that neither intends to take a position on this motion (*see* Blackhurst Decl. at ¶ 2.)

DATED this 20th day of October, 2006.

Respectfully submitted,

By: 
Steven K. Blackhurst, OSB #73032
ATER WYNNE LLP
222 SW Columbia, Suite 1800
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Attorney for Third-Party
RULESPACE LLC

UNITED STATES DISTRICT COURT
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**DECLARATION OF ALISTAIR R. ALLAN IN SUPPORT OF
RULESPACE LLC'S MOTION FOR PROTECTIVE ORDER**

I am the President and Chief Executive Officer of RuleSpace LLC ("RuleSpace"). This declaration is submitted in support of RuleSpace's motion to have filed under seal certain portions of my deposition testimony which are to be offered into evidence in this case.

RuleSpace is a small company based in Oregon which has developed a content classification technology that is designed to recognize various types of inappropriate content on Web pages or on mobile devices such as cell phones. Our primary customers are Internet service providers, search engines and cellular telephone companies.

Earlier this year, RuleSpace produced documents in response to a subpoena from the Department of Justice and on February 28, 2006, my deposition was taken in this case. When my counsel and I received the deposition transcript, we designated certain portions of my deposition testimony as confidential.

Our counsel was recently informed by counsel for the Department of Justice and by counsel for the ACLU that certain portions of my deposition testimony are to be offered into evidence in this case. RuleSpace respectfully requests that those portions containing confidential business information be filed under seal so that they cannot be viewed by the public.

In its October 16, 2006 letter to RuleSpace's counsel, the Department of Justice stated that it intended to introduce into evidence 28 excerpts from my deposition. RuleSpace requests that one of those excerpts be filed under seal, the testimony beginning at page 119, line 5, and ending on page 120, line 5. Lines 5 through 15 contain confidential information that is subject to the confidentiality provision in Section 9.10 of the Asset Purchase Agreement between RuleSpace, Inc. and Microsoft Corporation that was executed in August, 2002. Lines 16 through 25 on page 119 and lines 1 through 5 on page 120 contain confidential information that is protected by Section 6 of the Software License and Services Agreement that was executed between RuleSpace, Inc. and Microsoft Corporation in August, 2004.

The ACLU has informed our counsel that it intends to offer into evidence four excerpts from my deposition and any referenced exhibits. RuleSpace respectfully requests that each of these excerpts and any referenced exhibits be filed under seal:

- Page 93, lines 10 through 15, discloses the names of specific potential customers with whom RuleSpace is having business discussions. The identity of these customers is highly sensitive business information and the disclosure of names of these potential customers could cause serious damage to RuleSpace's efforts to do business with one or more of these customers.
- Page 105, lines 1 through 23, discloses confidential information that is protected by Section 9.10 of the Asset Purchase Agreement between Rule Space, Inc. and Microsoft Corporation that was executed in August, 2002. It also discloses confidential information that is

protected by Article 12 of the Technology License Agreement between RuleSpace, Inc. and America Online, Inc. that was executed in August, 2000. If this information were publicly disclosed, it might give our competitors an advantage in seeking business from new customers.

- Page 109, lines 1 through 8, discloses confidential information that is protected by Section 12 of the Software License Agreement between RuleSpace, Inc. and Yahoo!, Inc. that was executed in January, 2002. This excerpt discloses information that is a critical factor in price negotiations, and having this information publicly available could weaken RuleSpace's leverage in such negotiations.

- Page 161, lines 5 through 19, discloses confidential information that is protected by Section 9.10 of the Asset Purchase Agreement between RuleSpace, Inc. and Microsoft Corporation that was executed in August, 2002, specifically Sections 1.10 and 3.1(a)(i) of Exhibit 1.9 of the Technology License Agreement. Disclosure of this information could adversely affect RuleSpace's ability to sell new products and may confuse and unfairly limit RuleSpace's base of customers to which it is targeting its sales efforts.

I HEREBY DECLARE THAT THE FOREGOING STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THEY ARE MADE FOR USE AS EVIDENCE IN COURT AND ARE SUBJECT TO PENALTY FOR PERJURY.

This declaration was executed on October 20th, 2006 in Portland, Oregon.



Alistair R. Allan

UNITED STATES DISTRICT COURT
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et al.

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States,

Defendant.

Civil Action No. 98-CV-5591

**DECLARATION OF STEVEN K. BLACKHURST IN SUPPORT OF
RULESPACE LLC'S MOTION FOR PROTECTIVE ORDER**

1. I am an attorney representing RuleSpace LLC ("RuleSpace") in this litigation and attended the deposition of Alistair R. Allan, RuleSpace's President and Chief Executive Officer, that was taken on February 28, 2006.

2. Recently, I received letters from counsel from the Department of Justice and counsel for the ACLU indicating that each party intended to offer into evidence at trial excerpts from the deposition testimony of Mr. Allan. Copies of those letters, without attachments, are attached hereto as Exhibits A and B. I have informed counsel that some of these deposition excerpts contain confidential business information and that RuleSpace will ask the Court for a protective order so that these excerpts must be filed under seal. I was informed that neither the ACLU nor the Department of Justice intended to take a position on this motion.

3. I also represent that I am in the process of seeking admission to this Court *pro hac vice*, but am filing this motion prior to obtaining that status because of the imminent trial date in this case.

I HEREBY DECLARE THAT THE FOREGOING STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THEY ARE MADE FOR USE AS EVIDENCE IN COURT AND ARE SUBJECT TO PENALTY FOR PERJURY.

This declaration was executed on October 20, 2006 in Portland, Oregon.


Steven K. Blackhurst



U.S. Department of Justice
Civil Division, Federal Programs Branch

First-Class Mail:
P.O. Box 883
Washington, DC 20530

Express Delivery:
20 Massachusetts Ave., NW
Washington, DC 20001

Joel McElvain
Trial Attorney

Tel: (202) 514-2988
Fax: (202) 616-8470

RECEIVED

October 16, 2006

OCT 18 2006

Via Federal Express

ATER WYNNE LLP

Stephen K. Blackhurst, Esquire
Ater Wynn, LLP
KOIN Building
222 S.W. Columbia, Suite 1800
Portland, OR 97201

Re: ACLU v. Gonzales (E.D. Pa. No. 98-5591)

Dear Mr. Blackhurst:

Pursuant to paragraph 10 of the Agreed Protective Order entered by the United States District Court for the Eastern District of Pennsylvania on June 29, 2005, in the above-captioned case, this letter will notify you that, at the trial commencing on October 23, 2006, the defendant intends to offer into evidence, or expects that they may otherwise use, the following portions of the transcript of the February 28, 2006, deposition of Alistair R. Allen of RuleSpace, LLC. All references are to page numbers and line numbers of that transcript:

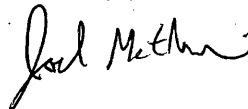
[14:20] – [15:4]
[16:22] – [18:2]
[20:6] – [20:22]
[22:4] – [22:24]
[25:16] – [28:1]
[32:23] – [33:2]
[36:22] - [44:17]
[53:22] - [54:16]
[58:6] – [59:21]
[70:14] – [71:1]
[71:24] – [72:7]
[73:7] – [73:11]
[75:4] – [75:14]
[78:15] – [78:21]
[84:16] - [85:1]
[87:23] – [89:9]
[92:13] – [92:18]
[97:4] – [97:14]
[105:25] - [108:5]

- 2 -

[110:11] – [111:2]
[113:22] – [115:13]
[119:5] - [120:5]
[159:20] – [160:21]
[167:19] - [168:7]
[168:20] - [169:15]
[198:5] - [199:14]
[201:13] – [201:20]
[202:17] – [202:22]

Please do not hesitate to contact me with any questions. I may be reached at (202) 514-2988.

Sincerely yours,



Joel McElvain
Federal Programs Branch
Civil Division

cc (via e-mail): Aden Fine, Esquire

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LATHAM & WATKINS LLP

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October 12, 2006

RECEIVED

OCT 16 2006

CONFIDENTIAL

ATER WYNNE LLP

Steven K. Blackhurst, Esq.
Ater Wynne, LLP
KOIN Building
222 S.W. Columbia, Ste. 1800
Portland, OR 97201

Re: ACLU, et al, v. Attorney General Alberto R. Gonzales,
Docket # 02:98-CV-05591-LR (E.D. Pa)

Dear Mr. Blackhurst,

Mr. Alistair R. Allan of RuleSpace, LLC was deposed on February 28, 2006, in connection with the ongoing litigation, ACLU, et. al. v. Gonzales. Please be advised that the parties intend to offer into evidence during trial portions of the deposition testimony and any referenced exhibits.

I am writing this letter to you because you previously designated some of this material, which is enclosed in this letter, as confidential. If this is the case, please be advised that pursuant to paragraph 10 of the Agreed Protective Order in this matter, which is enclosed herewith, you have an opportunity to move the Court to seal the evidence from public viewing.

Please feel free to contact me at (212) 906-1882 with any questions.

Sincerely,

Seth Friedman /EFD

Seth Friedman, Esq.

Enclosures

cc: Aden J. Fine, Esq. (via email, without enclosures)
Rafael O. Gomez, Esq. (via email)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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Defendant.

Civil Action No. 98-CV-5591

**[PROPOSED] ORDER ON RULESPACE LLC's MOTION FOR
PROTECTIVE ORDER**

Before the Court is RuleSpace LLC's Motion for a Protective Order requesting that the following excerpts from the deposition of Alistair R. Allan, President and Chief Executive Officer of RuleSpace LLC, taken on February 28, 2006, and any referenced exhibits thereto, may not be offered into evidence in open Court, and if admitted into evidence, shall be done so under seal:

- Page 93, lines 10-15;
- Page 105, lines 1-23;
- Page 109, lines 1-8;
- Page 119, lines 5-25 and Page 120, lines 1-5; and
- Page 161, lines 5-9.

After consideration of all papers and pleadings submitted to the Court and for good cause shown, IT IS HEREBY ORDERED that the following excerpts from the deposition of Alistair R. Allan taken on February 28, 2006, if offered into evidence, be FILED UNDER SEAL:

- Page 93, lines 10-15;
- Page 105, lines 1-23;
- Page 109, lines 1-8;
- Page 119, lines 5-25 and Page 120, lines 1-5; and
- Page 161, lines 5-9.

IT IS SO ORDERED:

Dated: _____, 2006

HON. LOWELL A. REED, JR.
UNITED STATES DISTRICT JUDGE

Submitted by:

Steven K. Blackhurst, OSB #73032
ATER WYNNE LLP
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Portland, Oregon 97201-6618
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Attorney for Third-Party RULESPACE LLC

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **RULESPACE LLC'S MOTION FOR PROTECTIVE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF ALISTAIR R. ALLAN AND STEVEN K. BLACKHURST IN SUPPORT THEREOF AND [PROPOSED] ORDER THEREON** on the following:

Seth Friedman, Esq.
Latham & Watkins LLP
53rd at Third
885 Third Avenue
New York, NY 10022-4834

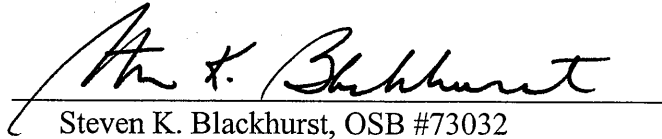
Attorneys for ACLU

Joel McElvain, Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20001

Attorneys for Defendant.

by ☒ mailing; ☐ hand delivery; ☒ facsimile a true and correct copy thereof to said parties on the date stated below.

DATED this 20th day of October, 2006.



Steven K. Blackhurst, OSB #73032
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Portland, Oregon 97201-6618
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RULESPACE LLC